



CITY COUNCIL AGENDA REPORT

MEETING DATE: OCTOBER 18, 2004

ITEM NUMBER:

SUBJECT: APPEAL OF CONDITIONAL USE PERMIT PA-04-14
2801 AND 2831 BRISTOL STREET

DATE: OCTOBER 4, 2004

FROM: DEVELOPMENT SERVICES DEPARTMENT/PLANNING DIVISION

PRESENTATION BY: MEL LEE, ASSOCIATE PLANNER

FOR FURTHER INFORMATION CONTACT: MEL LEE, ASSOCIATE PLANNER
714.754.5611

RECOMMENDATION:

Conduct a public hearing and either uphold, reverse, or modify Planning Commission's decision.

BACKGROUND:

The applicant is requesting a conditional use permit to allow a restaurant/bar/nightclub to serve alcoholic beverages for on-site consumption after 11 p.m. (12:00 midnight Sundays through Thursdays and 2:00 a.m. Fridays and Saturdays) and to allow live entertainment and dancing within 200 feet of a residential use, and to allow off-site parking at 2801 Bristol Street.

On September 13, 2004, Planning Commission, on a 4-0 vote (Commissioner DeMaio absent), denied the requests. On September 20, 2004, Council Member Cowan appealed Planning Commission's denial.

ANALYSIS:

In the appeal, the appellant states that the site has historically been a restaurant and proper conditions of approval can mitigate any concerns related to the proposed use.

Code requires a conditional use permit for a restaurant if it is located within 200 feet of a residential use. The restaurant building on the subject property is approximately 126 feet away from a two-story, 30-unit apartment complex at the rear of the same property on which the restaurant building is located. The parking area for the restaurant extends to the rear of the property, and abuts single-family homes in Mesa del Mar. The restaurant that formerly occupied the building, Arnie's Manhattan Deli, operated under a previous conditional use permit (PA-87-

82) which included conditions of approval requiring the restaurant to close at 11:00 p.m. and prohibiting dancing and live entertainment. An earlier conditional use permit (ZE-84-151) to allow live entertainment and dancing for a proposed restaurant/nightclub in the same building was denied by both Planning Commission and City Council in 1984.

The applicant is proposing to reopen the restaurant as "Hamburger Mary's Bar and Grille", a combination of restaurant, bar, and nightclub. The proposed use (after 11:00 p.m.) will have the operational characteristics of a nightclub, i.e., it will have a dance floor and disk jockey area. The majority of the on-site parking spaces for the proposed restaurant/bar/nightclub are between the existing restaurant building and the apartment building. At the hearing, the Planning Commission was concerned that the proposed use could create adverse noise impacts from the restaurant/nightclub patrons within the parking area, and, as a result, would not be compatible with the nearby residents, based upon the City's experience with similar establishments in proximity to residential uses. Additionally, as noted by the Police Department in their memo (a copy of which is attached to this report), the proposed use could create an increase in calls for Police service for noise, loitering, and security problems. At the hearing, the owner of another apartment complex abutting the property to the north expressed similar concerns with the proposed use.

The applicant is proposing to add a 598 square foot outdoor dining patio at the front of the building, which would create a deficiency of 13 on-site parking spaces (81 spaces required; 68 spaces provided). The applicant is also requesting a conditional use permit to allow the use of off-site parking spaces on the abutting property (2801 Bristol St.), which contains a two-story, 14,000 square foot office building. There would be adequate parking to accommodate the proposed use and the office building if both operated at the same time, however, the applicant anticipates that the off-site parking would only be needed in the evening hours and on weekends, when the offices are closed. In either event, staff does not anticipate any parking impacts based on the off-site parking on the abutting property if the patio were to be constructed. The applicant has indicated, however, that they will not pursue the proposed use at this location if the extended hours, entertainment, and dancing are not approved.

ALTERNATIVES CONSIDERED:

City Council may consider the following alternatives:

- (1) Uphold Planning Commission's decision to deny the request;
- (2) Reverse Planning Commission's decision and approve the request, subject to the conditions of approval contained in Exhibit "B" to minimize adverse impacts on the nearby residents. If the City Council wishes to approve the request, modifications to the findings contained in Exhibit "A" will need to be made.

FISCAL REVIEW:

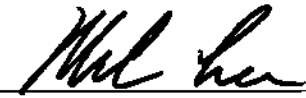
Fiscal review is not necessary.

LEGAL REVIEW:

Legal review is not necessary.

CONCLUSION:

The Planning Commission denied the request to remain open past 11:00 p.m. and for live entertainment and dancing because the proposed use could create adverse impacts on the nearby residents.



MEL LEE
Associate Planner



DONALD D. LAMM
Deputy City Mgr./Development Svs. Dir.

DISTRIBUTION: City Manager
City Attorney
City Clerk (2)
Staff (4)
File

Stan Sax
955 Goldenrod Avenue
Corona Del Mar, CA 92625

John Saunders and Doug Morehead
1600 Dove St., Suite 480
Newport Beach, CA 92660

Jason Golding
Grassis Commercial LLC
3535 E. Coast Highway, Suite 304
Corona Del Mar, CA 92625

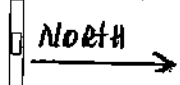
- ATTACHMENTS:**
1. Location Map
 2. Plans and Photos
 3. Draft City Council Resolution
 4. Exhibit "A" Draft Findings
 5. Exhibit "B" Conditions of Approval
 6. Minutes from Planning Commission Meeting of September 13, 2004
 7. Planning Staff Report
 8. Police Department Memo
 9. Planning Commission Resolution
 10. Correspondence Received from Public

File: 101804PA0414Mel:

Date: 100404:

Time: 400p.m.

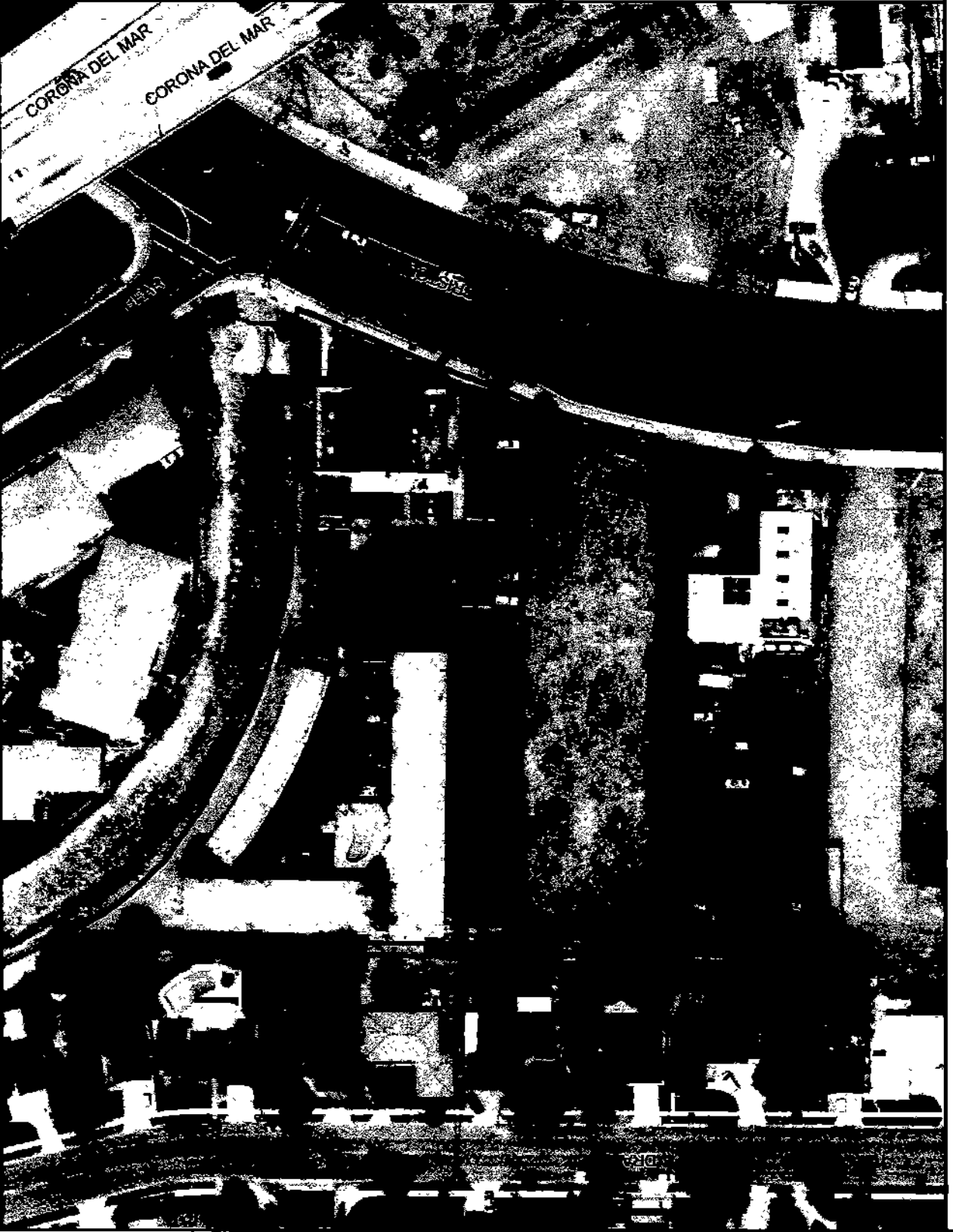
← Bristol Street →

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HAMBURGER MARY'S
2831 BRISTOL STREET
COSTA MESA, CA 92626
(REMODEL OF EXISTING ARNIE'S DELI)

PA-04-14

2801 AND 2831 BRISTOL ST.

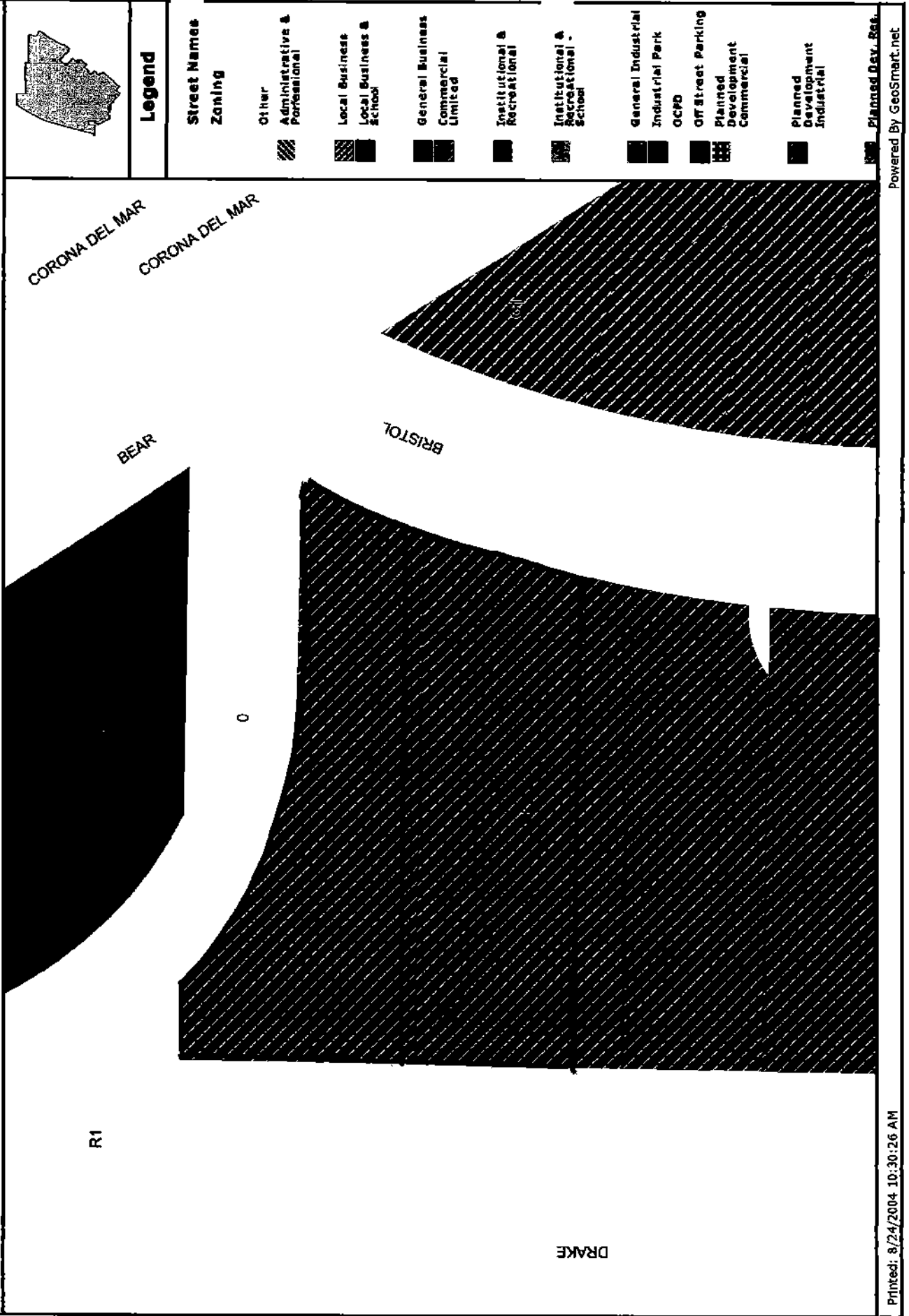


Legend

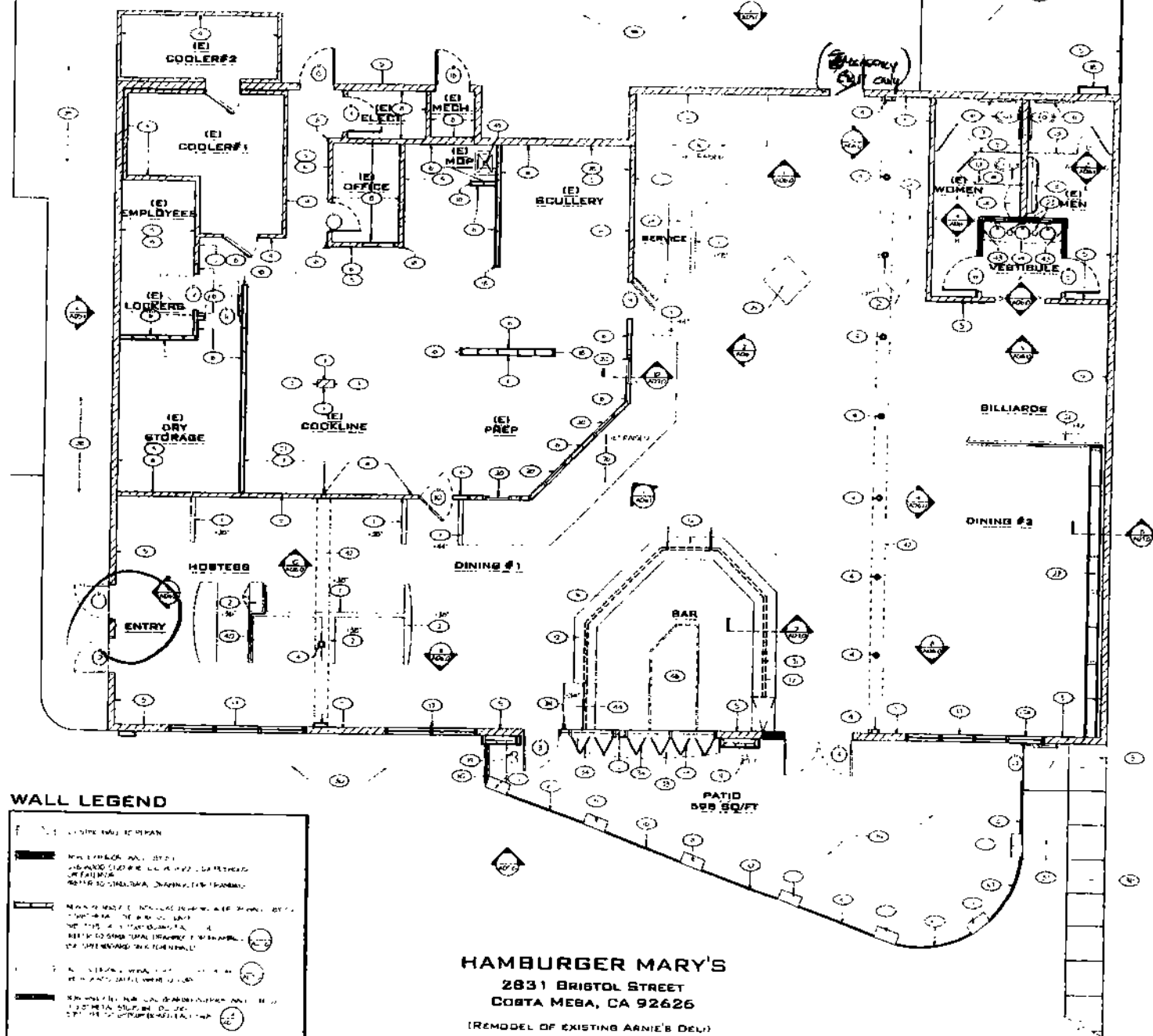
Street Names
Ortho
Photography

ZONING/LOCATION MAP

PA-04-14



Parking



HAMBURGER MARY'S
2831 BRISTOL STREET
COSTA MESA, CA 92626
(REMODEL OF EXISTING ARNIE'S DELI)

← Bristol Street →

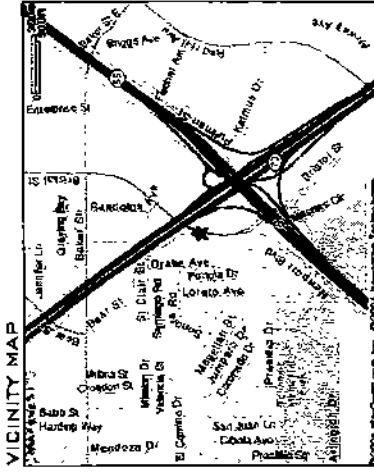
North →

NOT TO SCALE

PATHWAY LEGEND

PARKING TABULATION

PARKING TABULATION



ADS.1

PROJECT NUMBER

DATE

BY

REVISIONS

DESCRIPTION

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REVISIONS

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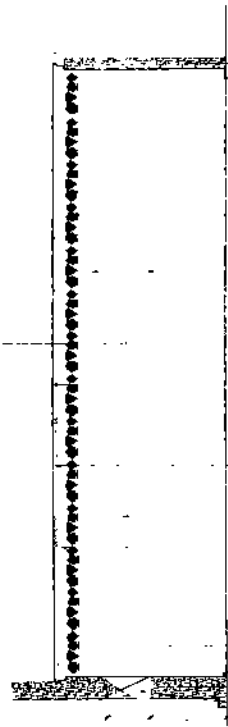
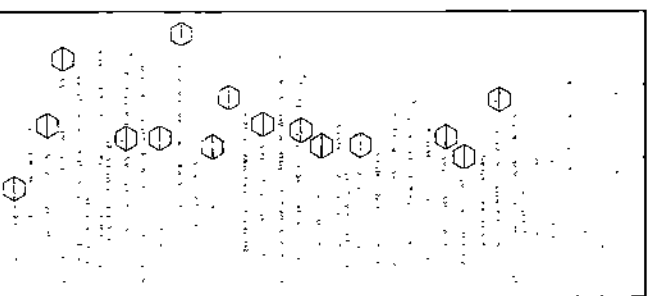
DESCRIPTION

DATE

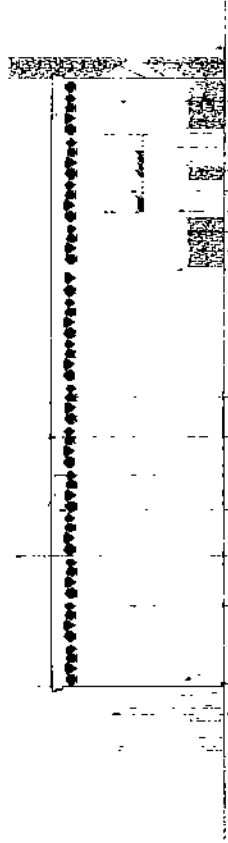
PAINT LEGEND

1	WHITE
2	BLACK
3	GRAY
4	BROWN
5	GREEN
6	BLUE
7	PINK
8	YELLOW
9	ORANGE
10	PURPLE

EXTERIOR ELEVATION NOTES



3 NORTH ELEVATION



4 SOUTH ELEVATION

RESOLUTION NO. 04-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
COSTA MESA DENYING CONDITIONAL USE PERMIT PA-
04-14**

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS
FOLLOWS:

WHEREAS, an application was filed by Stan Sax, authorized agent for John Saunders, Doug Morehead, and Jason Golding, with respect to the real property located at 2801 and 2831 Bristol Street, requesting approval of a conditional use permit to allow a restaurant to have sale and service of alcoholic beverages for on-site consumption after 11 p.m. (12:00 midnight Sundays through Thursdays and 2:00 a.m. Fridays and Saturdays) and to allow live entertainment and dancing within 200 feet of a residential use, and to allow off-site parking; and

WHEREAS, the Planning Commission denied Conditional Use Permit PA-04-14 on September 13, 2004; and

WHEREAS, on September 20, 2004, PA-04-14 was appealed to City Council; and

WHEREAS, a duly noticed public hearing was held by the City Council on October 18, 2004.

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A", the City Council hereby **DENIES** PA-04-14 with respect to the property described above.

PASSED AND ADOPTED this 18th day of October, 2004.

ATTEST:

Mayor of the City of Costa Mesa

APPROVED AS TO FORM:

Deputy City Clerk of the City of Costa
Mesa

City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE)ss
CITY OF COSTA MESA)

I, JULIE FOLCIK, Deputy City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa, hereby certifies that the above and foregoing Resolution No. _____ was duly and regularly passed and adopted by the said City Council at a regular meeting thereof held on the ____ day of ____, 2004.

IN WITNESS WHEREOF, I have herby set my hand and affixed the Seal of the City of Costa Mesa this ____ day of ____, 2004.

Deputy City Clerk and ex-officio Clerk of the
City Council of the City of Costa Mesa

FINDINGS

- A. The proposed use does not comply with Costa Mesa Municipal Code Section 13-29(e) because:
- The use is not compatible and harmonious with the residential use at the rear of the same property.
- B. The information presented does not comply with Costa Mesa Municipal Code Section 13-29(g)(2) in that the proposed use is not compatible with developments in the same general area. Granting the conditional use permit for the use will be detrimental to the health, safety and general welfare of the public or other properties or improvements within the immediate vicinity. Specifically, the proposed use, a combination of restaurant, bar, and nightclub, is approximately 126 feet away from an existing apartment building. The on-site parking area for the restaurant/bar/nightclub is between the existing restaurant building and the apartment building. The proposed use (after 11:00 p.m.) will have the operational characteristics of a nightclub, i.e., it will have an area containing a dance floor and disk jockey area. The noise impacts from the patrons within the parking area would not be compatible with the nearby residents, based upon the City's experience with similar establishments in close proximity to residential uses. Additionally, the proposed use could create an increase in calls for Police service for noise, loitering, and security problems.
- C. The request for off-site parking does comply with Costa Mesa Municipal Code Section 13-29(g)(2) in that the deviation will not be detrimental to the health, safety and general welfare of the public or other properties or improvements within the immediate vicinity. Specifically, there would be adequate parking if the restaurant/bar/nightclub and the abutting office development operate at the same time (i.e., during lunchtime on weekdays). However, the applicant has indicated that they will not pursue the proposed use if the extended hours, entertainment, and dancing are not approved.
- D. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City environmental procedures, and has been found to be exempt from CEQA.
- E. The project is exempt from Chapter IX, Article 11, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

EXHIBIT "B"**CONDITIONS OF APPROVAL (If Request Is Approved)**

- Plng.
1. The conditional use permit herein approved shall be valid until revoked, but shall expire upon discontinuance of the activity authorized hereby for a period of 180 days or more. The conditional use permit may be referred to the Planning Commission for modification or revocation at any time if the conditions of approval have not been complied with, if the use is being operated in violation of applicable laws or ordinances, or if, in the opinion of the development services director or his designee, any of the findings upon which the approval was based are no longer applicable.
 2. A copy of the conditions of approval shall be kept on premises and presented to any authorized city official upon request. Applicant shall notify new business/property owners of conditions of approval upon transfer of business or ownership of land.
 3. Construction, materials delivery, equipment operation or other noise-generating activity shall be limited to between the hours of 7 a.m. and 8 p.m., Monday through Friday, and between the hours of 8 a.m. and 7 p.m., on Saturday, Sunday, and Federal holidays. Exceptions may be made for activities that will not generate noise audible from off-site, such as painting and other quiet interior work.
 4. The use shall be limited to the type of operation described in the staff report. Any change in the operational characteristics including, but not limited to, hours of operation, sale of alcoholic beverages or provision of live entertainment and/or dancing, will require approval of an amendment to the conditional use permit, subject to Planning Commission approval.
 5. The licensee shall not employ or use the services of any full-or part-time active or reserve peace officer currently employed by the City of Costa Mesa or any contiguous agency for security purposes.
 6. Live entertainment, amplified music and/or dancing may only be permitted subject to City issuance of a public entertainment permit. Contact Code Enforcement at (714) 754-5623 for application information.
 7. A maximum of three (3) pool tables and three (3) video games shall be permitted unless the applicant applies for, and is granted, a minor conditional use permit.
 8. The maximum occupancy, as determined by provisions of the Uniform Building Code or other applicable codes, shall be posted in public view within the premises, and it shall be the responsibility of management to ensure that this limit is not exceeded at any

- time. Occupant loads for the open patio area and the enclosed building area shall be calculated and posted separately.
9. There shall be no room or designated area reserved for the exclusive use of designated persons or "private club members."
 10. The business shall be conducted, at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The applicant and/or business owner shall institute whatever security and operational measures are necessary to comply with this requirement.
 11. There shall be no sales of alcoholic beverages for off-site consumption.
 12. At all times the premises is open for business, the sale and service of alcoholic beverages shall be made only in conjunction with the sale and service of food.
 13. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food and meals during the same time period. The applicant shall at all times maintain records which reflect separately the gross sales of food and gross sales of alcoholic beverages of the business. The records shall be kept no less frequently than on a quarterly basis and shall be made available to the Development Services Director or his designee on demand.
 14. The restaurant shall remain a "bona fide public eating place" as defined by Section 23038 of the California Business and Professions Code.
 15. The parking lot shall be posted with signs directing customers and employees to use consideration when entering their cars and leaving the parking lot.
 16. Applicant shall secure the premises with appropriate security lighting and employee scrutiny of adjacent areas over which applicant has control, to prevent trash, graffiti, and loitering. Applicant shall further provide adequate lighting above the entrances to the premises sufficient in intensity to make visible the identity and actions of all persons entering and leaving the premises.
 17. The applicant shall maintain free of litter of all areas of the premises over which applicant has control.
 18. Any graffiti painted or marked upon the premises shall be removed or painted over within 48 hours of being applied.
 19. All operational conditions and restrictions shall be complied with, regardless of operating hours, 24 hours a day, seven days a week.
 20. The applicant shall contact the Planning Division to arrange a Planning inspection of the site prior to occupancy. This inspection is to confirm that the conditions of approval and code requirements have been satisfied.
 21. The application will be reviewed annually by Planning Staff. Any problems or violations of the conditions of approval may require

the application to be referred to the Planning Commission for modification or revocation.

22. Hours of operation shall be limited to 11 a.m. to 12:00 midnight Sundays through Thursdays, and 11:00 a.m. to 2:00 a.m., Fridays and Saturdays.
23. The conditions of approval and ordinance or code provisions of PA-04-14 shall be blueprinted on the face of the site plan as part of the plan check submittal package.
24. Music shall not be audible beyond the area under the control of the licensee.
25. The applicant shall repair and/or upgrade the property features (site paving, parking lot striping, fencing, lights, etc.) and the site shall be maintained in accordance with Code Section 20-7 (Property Maintenance Standards).
26. Existing mature vegetation shall be retained wherever possible. Should it be necessary to remove existing vegetation, the applicant shall submit a written request and justification to the Planning Division. A report from a California licensed arborist may be required as part of the justification. Replacement trees shall be of a size consistent with trees to be removed, and shall be replaced on a 1-to-1 basis. This condition shall be completed under the direction of the Planning Division.
27. Prior to the issuance of building permits, the applicant shall obtain approval from the County of Orange Solid Waste Local Enforcement Agency (LEA) at (714) 667-3600 for methane gas protection.
28. Post "Right Turn Only" sign for exiting traffic at existing driveway.
29. Maintain the public right-of-way in a "wet-down" condition to prevent excessive dust and remove any spillage from the public right-of-way by sweeping or sprinkling.

Trans.
Eng.



CITY OF COSTA MESA

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92628-1200

DEVELOPMENT SERVICES DEPARTMENT

**FOR ATTACHMENTS NOT INCLUDED IN THIS REPORT,
PLEASE CONTACT THE CITY CLERK AT (714) 754-5223**